IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

..

WRIT APPEAL Nos.4196 and 4197 of 2004,
and WAMP.Nos.7955 and 7956 of 2004 and
WVMP.Nos.2147 and 2148 of 2005

..

1. The Tamil Nadu Housing Board,
   rep. by Secretary & Personnel Officer,
   Tamil Nadu Housing Board,
   Nandanam, Chennai-600 035.

2. The Managing Director,
   Tamil Nadu Housing Board,
   Nandanam, Chennai-600 035. .. Appellant in both the appeals/Respondents

vs.

S.Kamala .. Respondent in W.A.No.4196/2000

A.Panneerselvam .. Respondent in W.A.No.4197/2000

Writ Appeals filed under Clause 15 of the Letters of Patent against the common order of the learned Judge Mrs. Justice Prabha Sridevan dated 02.11.2004 made in W.P.Nos. 38698 and 37821 of 2003 respectively.

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WP Nos.38698 and 37821/2003:

Petition presented to this Court under Article 226 of the constitution of India to issue writs of Certiorarified Mandamus, calling for the records of the first respondent proceedings dated 10.12.2003 and made in Boards Proc.No.DC1/74445/99-2 and DC1/74445/99-3 respectively and quash the order of the first respondent her illegal and consequently direct the respondent to reinstate the petitioners into service with all monetary benefits

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payable to the petitinoer.

For appellants : Mr. K.Chelladurai

For respondents : Mr.G.Ravishankar

COMMON JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

Against the common order dated 02.11.2004 made in W.P.Nos.37821 and 38698 of 2003, Tamil Nadu Housing Board has filed the above writ appeals.

2. Heard the learned counsel for the appellants as well as for the respondents.

3. The respondent in both the writ appeals are the writ petitioners. They were working as Section officer and Assistant in the Tamil Nadu Housing Board. In respect of allotment relating to HIG flats in Nesapakkam Scheme, it is the grievance of the Housing Board that the writ petitioners put up wrong note for joint allotment, which is against the Rules of the Housing Board. After ascertaining those details, both the writ petitioners were charged for allowing a person, who is not an allottee to execute a lease cum sale agreement. An enquiry was conducted. It is not in dispute that both the writ petitioners participated in the enquiry. Based on the report of the Enquiry Officer, the Board had taken a decision, dismissing both the writ petitioners from service. The order dismissing them from service was challenged by way of writ petitions.

4. Before the learned single Judge, two objections were taken, first relates to discrimination among the persons alleged to have been involved. It is stated that the writ petitioners prepared the note and finally the same was approved by one Hemavathi, Manager of the Housing Board and pursuant to her approval, the orders were issued. It is brought to the notice of the learned Judge as well as before us that in the case of Hemavathi, Manager, the punishment of withholding a sum of Rs.2,000/- per month under Tamil Nadu Pension Rules for a period of 34 months and Rs.500/- for one month as 35th instalment from the pension payable to her. On the other hand, as stated earlier, the writ petitioners who prepared a note were dismissed from service. In fact, this discrimination was noted by the Government when the resolution of the Board was placed for approval of the Government and by letter dated 08.10.2002, the Government indicated the same and also pointed out that when as regards one of the delinquent officers, lesser punishment was

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imposed, viz., withholding of pension, the order or removal in so far as the other two delinquent officers was not justified. The said aspect was highlighted by the learned single Judge. There is no proper explanation on the side of the Housing Board, why the direction of the Government was not taken note of in awarding punishment in the case of the writ petitioners. In addition to the same, as rightly pointed out by the learned Judge, the statement of other delinquent, viz., Hemavathi, who is none else than the Senior Officer (Manager), clearly show that to some extent she admitted the mistake and in such circumstances, as rightly pointed out by the learned Judge, the Board is not justified in discriminating the writ petitioners while awarding punishment.

5. As rightly pointed out, there is no material to show that the writ petitioners guilt is more serious than that of the co-delinquent, we accept the conclusion arrived at by the learned single Judge, more particularly, when the alleged misconduct is one and the same in so far as all the three officers. Further, as rightly observed, irrespective of notes prepared by the lower level officers / writ petitioners, it is the duty of the superior officer, viz., Hemavathi, Manager, to rectify the mistake. In spit of the same, she was awarded lesser punishment and the writ petitioners were imposed with capital punishment of dismissal from service. As observed earlier, we are in entire agreement with the conclusion arrived at by the learned single Judge and unable to accept the stand taken by the appellant/Housing Board. In fact, the learned Judge permitted the Board to take fresh decision in so far as the punishment to be imposed on the writ petitioners. In such circumstances, we are of the view that the Board is no way prejudiced or affected by the order of the learned Judge.

In the light of what is stated above, we do not find any valid ground for interference. Consequently, both the appeals fail and are accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary & Personnel Officer,
   Tamil Nadu Housing Board,
   Nandanam, Chennai-600 035.

2. The Managing Director,
   Tamil Nadu Housing Board,
   Nandanam, Chennai-600 035.

+1cc to Mr.K.Chelladurai, Advocate Sr 53340

AKM (CO)
km/24.11.

Writ Appeal Nos.4196 and 4197
of 2004

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